WP(C) 3426/2007

BEFORE

HON'BLE THE AMITAVA ROY

In assailment is the order dated 2/7/2007 of the Secretary, Public Health Engineering and Water Supply Department, Government of Arunachal Pradesh, reviving the order dated 14/6/2007 of the said authority transferring the petitioner from Namsai Division to the PHED Aalo(Bene) Circle vice the respondent No. 3 in the reverse order. While issuing notice of motion on 11/7/2007, this Court had directed maintenance of status quo with regard to the office of the Executive Engineer, PHED, Namsai Division. It is submitted at the Bar that both the petitioner and the respondent No. 3 are, as a consequence thereof presently at the said Division.

2. I have heard Mr. PK Tiwari, learned Counsel for the petitioner and Mr. B. Banerjee, learned Sr. Government Advocate, Arunachal Pradesh, for the official respondents. Also heard Mr. C. Baruah, learned Sr. Counsel appearing for the respondent No. 3.

3. The recorded case of the petitioner is that he is an Executive Engineer of the Public Health Engineering and Water Supply Department, Government of Arunachal Pradesh (hereafter referred to as the Department) and on being transferred to Namsai Division vide order dated 1/1/2005 had taken over charge in the said capacity on 4/1/2005 and since then has been serving as such. The respondent No. 3, according to him, was accorded adhoc promotion to the post of Executive Engineer and was in the month of May, 2004, at Aalo/Along Circle in the District of West Siang. The petitioner has averred that for reasons known to him, the respondent No. 3 was not interested to continue at Aalo/Along Circle and, therefore, endeavoured to get himself transferred to some other place of his choice. The petitioner has referred to the orders dated 6/12/2006, 2/1/2007 and 3/1/2007 to reinforce this stand. He has stated that thereafter two MLAs of 47-Namsai (ST) Constituency and 44-Tezu (ST) Constituency jointly made a representation on 8/6/2007 to the Chief Minister of the State requesting transfer of the petitioner from the post of Executive Engineer, PHE, Namsai Division, so as to accommodate Mr. JJ Bhagat and/or Mr. AB Gohain in the said department. He has averred that as the said move did not yield any result another process was initiated by a group of MLAs to induct the respondent No. 3 in place of the petitioner at that Division. The petitioner has alleged that eventually in view of the pressure exerted by the MLAs including the Home Minister, the Under Secretary of the Department, by order dated 14/6/2007 transferred the respondent No. 3 from PHED Aalo (Bene) Circle to the Namsai Division in place of the petitioner. As the measure was resented in certain quarters, by a subsequent order dated 18/6/2007 the order dated 14/6/2007 was superceded and the petitioner and the respondent No. 3 were retained at their respective places of posting. However, within a fortnight thereafter the impugned order was passed restoring the order dated 14/6/2007. Referring to some extracts from the relevant files, the petitioner has sought to assert that the impugned order is an yield of political pressure and is not informed with public interest or administrative exigency.

4. The State respondents in their counter while categorically denying the allegation of extraneous consideration, political interference and malafide, has questioned the maintainability of the petition for the non-impleadment of the Home Minister and the MLAs who alleged to have devised the postings of the parties. According to them, no foundation for such allegation having been laid in the petition, the same ought to be rejected in limine. They have dismissed the orders dated 6/12/2006, 2/1/2007 and 3/1/2007 as inconsequential. It has been averred that the representation dated 8/6/2007 by the MLAs of 47-Namsai (ST) Constituency and 44-Tezu (ST) Constituency has not been acted upon and thus is not relevant for the adjudication of the instant proceeding. They have maintained that the impugned order had been passed in public interest and that the transfer being an incident of service, the same is not liable to be interfered with. To the contrary, they have alleged that the order of transfer was sought to be stultified at the instance of the petitioner who caused some pressure to be exerted through political high ups. The answering respondents affirmed that the respondent

No. 3 had, pursuant to the order impugned joined at Namsai Division on 5/3/2007 and though the petitioner was directed to handover the charge of the office on 6/7/2007, he did not comply therewith.

5. The respondent No. 3 in his affidavit while generally attesting the pleaded stand of the official respondents has insisted that the order assailed had been passed due to administrative exigencies and not influenced by any extraneous consideration. He has categorically denied that the same was issued at the instance of the Home Minister and the MLAs of the State as alleged. The respondent has endeavoured to project that the order instead was sought to be injuncted at the instance of the petitioner through the Minister of RWD and RD. According to him, the orders dated 6/12/2006, 2/1/2007 and 3/1/2007 do not have any bearing on the present issue. The answering respondent has confirmed that pursuant to the order dated 14/6/2007, he had been released on 18/6/2007 and had joined at Namsai Division on 5/7/2007 much before the interim order was passed by this Court.

6. Mr. Tiwari has emphatically urged that it being evident on the face of the record that the impugned order of transfer had been passed at the behest of the Home Minister and some MLAs of the State and not on considerations of public interest or administrative exigency, it is patently illegal and arbitrary and is liable to be interfered with. The arrangement assailed being the fall out of pressure exerted by extra departmental authorities, the same is an abuse of executive power vitiating the same. Not only the order is none to effect a routine or regular transfer, the petitioner was thereby sought to be picked up to his prejudice to accommodate the respondent No. 3 on extraneous considerations and the departmental authorities abdicated their power and discretion on impertinent and inapposite considerations, he urged.

7. As against this, Mr. Banerjee has argued that the Home Minister and the MLAs alleged to be instrumental for the petitioner’s transfer not having been impleaded in the instant petition and no foundation what so ever to support the allegation of malafide or extraneous considerations having been provided therein, the contentions based thereon are per se untenable and the petition is liable to be dismissed with cost. The learned State Counsel on the basis of the records maintained that the representation dated 8/6/2007 of the MLAs was not acted upon and, therefore, the reference thereof is wholly irrelevant. The impugned order has been passed in public interest to sub serve administrative exigencies pursuant to which respondent No. 3 has already joined at Namsai Division and is continuing as such. Having regard to the limited scope of scrutiny of an order of transfer no interference in the facts and circumstances of the case, he urged.

8. Mr. Baruah while reinforcing the above assertions has submitted that in absence of any tangible material on record to indicate that the impugned order had been passed at the instance of the respondent No. 3, the pleas to the said effect are misconceived and lacks bonafide. Stoutly denying the allegation that the order challenged is at the behest of any extra departmental authority, the learned Sr. Counsel contended that the petitioner having resorted to such measures himself is not entitled to any equitable consideration of this Court. The respondent No. 3 in the meantime having joined at the Namsai Division pursuant to the order of transfer and continuing as such till date, the petition is liable to be dismissed, he urged.

9. The contesting arguments have been noted. The basic facts leading to the passing of the impugned orders are admitted. The decision assailed being essentially administrative in nature, the official records as the garner of the contemporaneous facts ought to guide the adjudication process. The records disclose that following the instruction of the Minister (PHE and WS, COOP and IPR) issued on 8/6/2007, the matter was processed and eventually the Chief Minister of the State on 14/6/2007 approved the transfer and postings to effect the order of the same date. This decision was preceded by a note forwarded by the departmental Minister revealing that the posting of the respondent No. 4 at Namsai Division is as per the request of the MLA of the Lohit District and the Minister (Home) of the State. Two MLAs from the 47-Namsai (ST) Constituency and 44-Tezu (ST)

Constituency had on 8/6/2007 through an UO communication also requested the Chief Minister of the State to post one Shri AB Gohain, Executive Engineer, at Namsai Division in the Lohit District. This was forwarded by the Chief Minister to the Departmental Minister on the very same date with a request to take appropriate action in terms of the proposal made by the MLAs. In his turn the departmental Minister on 13/6/2007 in his note mentioned about the action already initiated for posting the respondent No. 4 as above.

10. While the matter rested at that, the Minister RWD and RD by an UO communication dated 16/6/2007 requested the Chief Minister to retain the petitioner at Namsai Division in the interest of public service. It was inter alia mentioned therein that he (petitioner) by then had completed two years at that Division and that the projects under taken by him were required to be supervised by him. The Chief Minister of the State by his note of the very same date approved the petitioner's retention at Namsai Division as requested. The order dated 18/6/2007 retaining the parties as well as other officers mentioned therein at the respective stations was thus issued. On the very same date, however, presumably before the retention order had been issued, the respondent No. 4 was released from Aalo PHE (Bene) Circle. The Chief Minister thereafter on 25/6/2007 revived the order dated 14/6/2007 transferring the petitioner to Aalo PHE Circle (Bene) vice the respondent No. 4 posted to Namsai PHE Division in his place. Accordingly the impugned order was passed. The records, however, disclose that in his note preceding the same, the Secretary of the department had interalia pointed out that the petitioner had not completed the normal tenure of three years at Namsai and that his transfer therefrom by order dated 14/6/2007 had earlier been reviewed. The records, however, do not disclose any reason for the change in the decision of the Chief Minister of the State restoring the order of transfer dated 14/6/2007. The records also do not contain any material to suggest that the MLAs of Lohit District and the Minister (Home) of the State had requested the departmental minister to effect the arrangement as reflected in the order dated 14/6/2007.

11. Noticeably, however, the records do not reveal any exercise whatsoever made by the departmental authorities to asses the organizational exigency necessitating the transfers. Not only the process undertaken appears to be replete with extra departmental interventions, the consideration of public interest and administrative needs do not seem to have informed the same. The note dated 28/6/2007 of the Departmental Secretary demonstrates the state of confusion that had prevailed in view of the sequence of events. Though the interception by the Minister RWD and RD in favour of the petitioner does not auger well for the petitioner the transfer order impugned in the instant proceeding in the attending facts and circumstances cannot withstand judicial scrutiny. As it is, transfer though an incidence of service does not endow the concerned administrative authorities with unfettered prerogative or discretion to act at their whims. Such a decision has to be indispensably conditioned by determinants of administrative exigency and public interest. Not only the records are silent about such considerations to have weighed in favour of the order of transfer, the demonstrable vacillation of the concerned authority in the matter engendered by requests and cross-requests of the extra departmental functionaries have rendered the exercise questionable and non-transparent.

12. In the above factual premise, the orders of transfer dated 14/6/2007 and 2/7/2007 are interfered with and quashed. The matter stands remitted to the Secretary, PHE and Water Supply Department, Government of Arunachal Pradesh to cause fresh steps to be taken to decide on the places of posting of the parties if warranted, strictly on the criteria of administrative exigency and public interest.

The petition stands allowed in the above terms. No costs.